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C O N F I D E N T I A L SECTION 01 OF 03 KUALA LUMPUR 000562

SIPDIS

FOR EAP/MTS AND INR

E.O. 12958: DECL: 07/02/2018  
TAGS: [PGOV](#) [PINR](#) [KJUS](#) [KDEM](#) [MY](#)  
SUBJECT: NO GOM ACTION AFTER LINGAM PROBE IMPLICATES  
MAHATHIR AND OTHERS

REF: A. 07 KUALA LUMPUR 1594 - BAR COUNCIL AND PM FACE OFF  
[1](#)B. 07 KUALA LUMPUR 1458 - LAWYERS TAKE TO STREETS  
[1](#)C. 07 KUALA LUMPUR 1446 - VIDEO OF JUDGE-FIXING

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Classified By: Political Section Chief Mark D. Clark, reason 1.4 (b and d).

SUMMARY

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[1](#)1. (C) The Royal Commission of Inquiry into the Lingam video scandal concluded that former Prime Minister Mahathir and five other prominent individuals should be investigated for manipulating judicial appointments and promotions. The Commission, established by the Government of Malaysia (GOM) to probe alleged judge fixing by a senior Malaysian lawyer, released its findings on May 20. In response to the Commission's recommendations, the Attorney General initially announced plans to investigate Mahathir and the five other prominent Malaysians including current UMNO Secretary General Tengku Adnan Tengku Mansor, and former Chief Justice Eusoff Chin. To date, however, the GOM has taken no follow-up action. The Royal Commission's recommendations may meet the same fate as Prime Minister Abdullah's modest judicial reform proposals, which suffer from a lack of political support within the ruling UMNO party and tepid backing from the Prime Minister himself. End Summary.

Judicial corruption caught on video

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[1](#)2. (SBU) Former Deputy Prime Minister Anwar Ibrahim released a video in September 2007, showing V.K Lingam, a well-connected lawyer, in a telephone conversation with then Chief Judge Ahmad Fairuz (ref C), who retired as Chief Justice in October 2007, roughly one month after Anwar's expose. In the conversation that took place in 2002, Lingam and Fairuz discussed judicial appointments and the assigning of judges to particular cases. The video shows Lingam bragging he could get key judicial appointments with Mahathir's help. Public outcry and a high-profile protest march by the Bar Council (ref B) forced the GOM to form a three member independent panel, which could only investigate the authenticity of the video. Judicial reform advocates strongly criticized the panel's limited investigative scope and pushed Prime Minister Abdullah to establish in December 2007 a five-member Royal Commission of Inquiry, chaired by former Chief Judge of Malaysia Haidar Mohamed Noor (ref A).

Royal Commission's findings

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[1](#)3. (SBU) The Commission's task was to verify the tape's

authenticity and determine whether there were credible indications that any individuals involved acted illegally. Zaid Ibrahim, de facto minister for legal reform, released the Commission's findings, which totaled five volumes, on May 16, 2008. The Commission concluded that a number of high-ranking government officials and prominent individuals, including then Prime Minister Mahathir, purposely manipulated the judiciary and undermined its independence. The report states there was "an insidious movement" by Lingam with the covert assistance of his close friends to involve themselves actively in the appointment of Ahmad Fairuz as the Chief Judge of Malaya and Court of Appeal President. The Commission found no evidence that Mahathir had consulted with either the Chief Justice or the Chief Judges of the two High Courts, as required under the Federal Constitution, when he rejected Malek Ahmad's name for the post of Chief Judge of Malaya. Neither was there any consultation when Mahathir nominated Ahmad Fairuz to fill the post. The Commission certified the authenticity of the video without hesitation and confirmed that Lingam was speaking to Ahmad Fairuz. The findings indicated Lingam possessed an "uncanny knowledge" of what could be considered as matters protected under the Official Secrets Act.

14. (SBU) The Commission found that Mahathir and Vincent Tan, an influential business leader close to Mahathir, undermined the independence and integrity of the judiciary. The Commission further noted that Lingam's connections with current UMNO Secretary General Tengku Adnan and Tan facilitated his involvement in the appointment of Ahmad Fairuz. Tengku Adnan was a minister in the Prime Minister's Department and a close business associate of Tan at the time of the video's recording.

15. (SBU) The Commission noted the Anti-corruption Agency

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(ACA) has grounds to investigate the relationship between Lingam and Eusoff Chin, another former Chief Justice, because Lingam was representing clients before Eusoff's court at the time the of the video's recording. Eusoff rebutted Mahathir's claim that he and Eusoff may have discussed judicial appointment with Lingam. The report also states there is sufficient cause to investigate the involved individuals for illegal acts covered by the Sedition Act, the Prevention of Corruption Act, the Legal Profession Act, and the Official Secrets Act against the named individuals, including Mahathir, Lingam, and Ahmad Fairuz.

#### The Commission Recommendations

16. (SBU) Along with its findings, the Commission released a series of recommendations to restore judicial independence. The Commission recommended the creation of a Judicial Appointment Commission (JAC), headed by the Chief Justice and includes the President of the Court of Appeal and the Chief Judges of the two High Courts. The JAC's role in judicial promotions would be evaluating prospective candidates for promotion and presenting the Prime Minister with a list of candidates the JAC deemed qualified. The Commission also suggested having retired Chief Justices, Presidents of Court of Appeal, Chief Judges of the High Courts, and Federal Court judges as additional members of the JAC. The Commission recommended reviewing all prior cases that involved Lingam, Ahmad Fairuz, and Eusuff Chin.

17. (SBU) The Royal Commission's most significant recommendation was amending Article 121(1) of the Federal Constitution back to its original wording, which would reestablish an independent judiciary. Originally, the constitution vested judicial power in the courts of Malaya and Borneo. In the midst of a struggle with the courts, Mahathir altered the constitution in 1988, shifting judicial power to parliament and giving the Attorney General authority to decide what cases go to trial and which judge hears the

case.

Good Ideas Going Nowhere Fast

18. (SBU) Responding to the Commission's report, the Attorney General announced the six individuals named in the report, most notably Mahathir, would be investigated. However, there has been no visible movement in any of the investigations since the GOM's announcement. Instead, in late June many of those implicated by the Royal Commission filed for judicial review in order to strike out the Commission's findings.

19. (C) Prime Minister Abdullah announced some intended judicial reforms in April 2008, including a Judicial Appointments Commission, recommended by the Commission and championed by Minister Zaid Ibrahim. The reforms, however, have yet to receive Cabinet approval and have not been sent to the Parliament. On June 21, Zaid announced that the decision to create the JAC was placed "on hold." A close aide to Minister Zaid informed us in late June that there was no Cabinet support for the recommendations, and that PM Abdullah had not provided sufficient backing to the proposals. A number of UMNO members of parliament have told us that Zaid Ibrahim's reform proposals are very unpopular within UMNO.

COMMENT

110. (C) The Commission's recommendation to reestablish an independent judiciary clashes with vested political interests, particularly within the leading UMNO party and including those of Abdullah's own family and associates; consequently, the recommendation has found no support within the Cabinet. UMNO conservatives have actively defended executive branch control over the judiciary, noting this is critical for effective rule by the National Front (BN) coalition. As one clear indication of the Commission's lack of traction, UMNO has never questioned Tengku Adnan's continuation as the chief national functionary of the party, despite the Commission implicating him in the Lingam scandal. Although Abdullah's appointment of Zaid Ibrahim and his announcement of intended reforms sent hopeful initial signals, lack of progress in moving modest reforms forward reflects the Prime Minister's inability to muster internal support and his own tepid backing. The BN government's lack of follow up on the Royal Commission's conclusions does not bode well for judicial reform.

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KEITH